IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No.9434 of 2007
Date of decision: July 11 , 2007

Bharat Inder Singh Chahal V. State of Punjab and others

CORAM: HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

Present: Shri R.S.Cheema, Senior Advocate with Mr. K.S. Nalwa, Advocate for the petitioner.
Shri H.S.Mattewal, Advocate General, Punjab with Mr. Rupinder Khosla, Additional Advocate General,Punjab.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

P.Sathasivam,J.

(1) Bharat Inder Singh Chahal, through his wife, Smt. Jaswinder Kaur, resident of Patiala has filed the above Civil Writ Petition praying the following relief:

> "Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of appropriate writ, orders or directions protecting the petitioner in the due process of law against calculated and substained infringement of the petitioner's fundamental and statutory rights by planned abuse of the administrative apparatus of the State of Punjab by the respondents;
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> With a further prayer for a specific direction that the

petitioner be not deprived of his liberty and other fundamental rights except in due process of law;

With a further specific direction that the petitioner be given a week's advance notice before effecting his arrest in any case registered in the State of Punjab;

With a further direction that the Vigilance Bureau shall not arrest the petitioner in any case without prior permission of this Hon'ble Court;

With a further prayer that the Vigilance Bureau or any other official connected therewith shall not question, interrogate or harass the petitioner while he is in custody of Punjab Police (other than Vigilance Bureau) or while he is in judicial custody in any such case;

With a further specific direction that the communications dated 27.4.2007 asking the banks to freeze and stall the operation of bank accounts and lockers even before the petitioner was involved in any case, be quashed forthwith;

With a further direction that the order of remand (Annexure P-21) passed by Shri K.S.Cheema, learned Additional Chief Judicial Magistrate/Duty Magistrate, Ludhiana on 10.6.2007 be quashed;

With a further prayer that the entire record of the investigation of case FIR No.105 dated 10.6.2007 (Annexure P-16) under sections 307, 452,447,379,427,148,149 of Indian Penal Code registered at Police Station Sadar, Ludhiana be entrusted to the CBI and further investigation by Punjab Police in the matter be stayed forthwith; “

The case of the petitioner as stated in the writ petition is briefly stated hereunder :

(a) According to the petitioner, he is 59 years old and was appointed as Media Advisor to Captain Amarinder Singh, the then Chief Minister,Punjab in February,2002 and was given the status of Minister. He resigned in January,2007, before the assembly election in February,2007, in which Akali Dal (B) - BJP Government came to power. The third respondent, Shri Parkash Singh Badal, took over as Chief Minister, State of Punjab on 3.3.2007. Since a criminal case was registered against the third respondent in FIR No.15 dated 24.6.2006, under sections 420,467,468,471,120-B of the Indian Penal Code read with sections 7,8,9,10, 13(1) and 13(2) of Prevention of Corruption Act at Police Station VB FSI, Mohali, he has a grudge against the petitioner and made a open/public statement that the petitioner will not be spared. This is evident from reports published in various newspapers which are annexed with the present petition. Further respondent No.3 had been openly alleging that the petitioner was instrumental in getting the FIR registered against him and his family members through one Balwant Singh.

(b) After the change of Government in Punjab in March,2007 and Akali Dal (B) coming to power has led to registration of criminal cases against the Ex. Chief Minister, former Congress Ministers, close associates of the Ex. Chief Minister and Congress workers. The petitioner is being specially targeted and his family, friends, associates, former employees and gunmen are being repeatedly threatened and pressurized to give any incriminating statement against the petitioner leading to registration of an FIR against him. The Punjab Vigilance Bureau under the

pressure of respondent No.3 are leaving no stone unturned for implicating the petitioner in any false criminal case leading to his arrest.

(c) The Vigilance Bureau, Punjab registered an FIR No.5 dated 23.3.2007 (Annexure P 9/A), under sections 409,420,467,468,471,120-B of the Indian Penal Code and sections 7 and 13(1) (c) and (d) read with sections 13(2) and 14 of the Prevention of Corruption Act, at Police Station Vigilane Bureau, Ludhiana known as “Ludiana City Centre Scam”. In the instant case, this court on 30.5.2007 granted interim protection to the petitioner and adjourned the case for 31.5.2007.

(d) On 8.6.2007, the petitioner received a notice under section 160 of the Code of Criminal Procedure from Vigilance Bureau,Ludhiana to join investigation in case FIR No.5 dated 23.3.2007 on 10.6.2007. During the said interrogation, the officers of the Vigilance Bureau, Ludhiana and the local Punjab Police were present and the petitioner was informed that he is being arrested in FIR No.105 dated 10.6.2007 (Annexure P/16), registered on the basis of complaint of Harchand Singh under sections 307,452,447,379,427,148 and 149 of the Indian Penal Code,Police Station Sadar, Ludhiana.

(e) In the additional affidavit, it is stated that apart from the above mentioned two cases, the Punjab Police have registered FIR No.126 dated 12.6.2007 (Annexure P-30) under sections 324,406,420,467,468,471 of the Indian Penal Code, Police Station Civil Lines, Patiala and FIR No.227 dated 13.6.2007 (Annexure P/31), under sections 406,420,506 of the Indian Penal Code at Police Station Kotwali, Patiala. He was falsely implicated in various FIRs registered by the Punjab Police with a view to circumvent the

order dated 1.6.2007 passed by this court in Criminal Misc. No.35545-M of 2007.

(f) It is further stated that because of the political vendetta and his close relationship with former Chief Minister, after the change of the Government, the Punjab Police conducted raids at various places not only of the petitioner but also his wife and other family members. The constitution of Vigilance Bureau itself is questionable and hence there cannot be any action through them.

(g) It is further stated that since the police including the Vigilance Bureau fail to follow the mandatory conditions as laid down in D.K.Basu V.State of West Bengal AIR 1997 SCC (610), the arrest and order of remand as well as further follow up actions are liable to be quashed. Since the petitioner apprehends that he will not get fair justice at the hands of Punjab Police/Vigilance Bureau, all the FIRs filed against him be transferred to CBI for further investigations.

(2). On behalf of the respondents No.1 and 2, one Pirthi Chand, Additional Secretary, Vigilance, Government of Punjab has filed a written statement disputing various allegations made in the writ petition. The contents of written statement are briefly stated hereunder :

(a) Against the order dated 31.5.2007, Anneuxre P-13, the State of Punjab filed SLP (Crl.) No.3478 of 2007. In the meanwhile the petitioner had filed Crl. Misc 35545-M of 2007 in which interim order dated 1.6.2007 was passed directing that till 4.7.2007, the petitioner shall not be arrested in any case by the Punjab Vigilance Bureau without giving him 4 days notice in advance. The said order made it clear that the interim directions shall continue till 4.7.2007 and the same would be subject to the orders if any passed by the

Supreme Court in the SLP filed against the order dated 1.6.2007. The said SLP along with other connected petitions were disposed of vide order dated 18.6.2007.The said order has been annexed as Annexure P/32. It is further stated that in view of the order passed by the Supreme Court and the law laid down in the cade of Adri Dharan Das V. State of West Bengal 2005(4) SCC 303, the present writ petition is liable to be dismissed.

(b) On merits, it is stated that the cases have been registered against the petitioner only on the basis of complaints made by the persons concerned. Further, the learned Magistrates have exercised their judicial mind while granting remand . Hence the prayer of the petitioner is wholly misconceived and mere attempt to scuttle the due process of law. The allegation that pressure has been made to bear upon the respondents from any quarter for taking action against the petitioner is baseless and denied. The specific role of the petitioner in the administrative and political set up of the previous regime,pertaining to decision making, involving investment and other matters etc. would come to fore only after the completion of the investigation process. It is reiterated that the majesty of law would be completely upheld. The change of heads of Government at the political level, has no bearing whatsoever in its administrative functioning. Neither the present Chief Minister nor his son has any role whatsoever in getting any FIR registered against the petitioner. Any reference to the news paper/report in this regard has no meaning. The petitioner was never taken anywhere from the custody of the Punjab Police. All the FIRs were registered without any prejudice or malafide intention or political vendetta as alleged by the petitioner. On the other hand, the same have been registered in accordance with the provisions of law and are being duly

investigated by a team headed by an officer of the rank of Superintendent of Police. The Vigilance Bureau is acting in an absolutely independent and fair manner. It is,therefore prayed that since no case for interference by way of writ petition is made out, the same is liable to be dismissed.

(3) In the light of the above pleadings, we heard Shri R.S.Cheema, learned Senior Advocate for the petitioner and Shri H. S. Mattewal, learned Advocate General,Punjab for the respondents.

(4) First let us consider the broader question/relief raised in this petition , namely, intimation to the petitioner/ a week's advance notice before effecting arrest in any case registered in the State of Punjab. We have referred to only minimum facts required for disposal in the earlier paragraphs, because of the fact that either petitioner himself or his wife approached various courts, including criminal jurisdiction of this court as well as other subordinate courts for serveal reliefs, we desist from elaborating the grievance expressed by the petitioner as well as the stand of the prosecution. However,We have to consider the power of the court exercising jurisdiction under section 438 of the Code of Criminal Procedure. Mr. R.S.Cheema learned senior counsel for the petitioner and Mr. HS Mattewal, learned Advocate General,Punjab appearing for the State heavily relied upon the judgments of the supreme Court reported in Gurbaksh Singh Sibbia etc V. State of Punjab AIR 1980 SC 1632, and Adri Dharan Das V. State of West Bengal (2005)4 SCC 303.

(5) The first decision in Gurbaksh Singh Sibbia(supra) is by a constitution Bench wherein their Lordships have considered order of bail/anticipatory bail and powers of High Court or Sessions Court to impose conditions. After dealing the subject in great depth,

their Lordships have concluded :

> " 35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief' for which reason it is not enough for the applicant to show that he has somesort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. S. 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.
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> Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply

its own mind to the question and decide whether a case has been made out for grant-in-such relief. It cannot leave the question for the decision of the Magistrate concerned under S.437 of the Code as and when an occasion arises. Such a course will defeat the very object of Section 438.

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under S.438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after any FIR is filed so long as the applicant has not been arrested.

Fifthly, the previsions of S.438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offences for which he is arrested are concerned. After arrest, the accused must seek his remedy under S.437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

36. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No.(2). We agree that a "blanket order" of anticipatory bail should not generally be passed, this flows from the very language of the section which, as discussed above, requires the

applicant to show that he has “reason to believe” that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under S.438(1) to the effect that the applicant shall be released on bail “whenever” arrested for whichever offence whatsoever”. That is what is meant by a “blanket order” of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which no concrete information can possible be had.

The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua none of the exercise of power conferred by the section.

37. Apart from the fact that the very language of the statute compels this construction this is an important principle involved in the insistence that facts, on the basis of which a direction under S.438 (1) is sought,

must be clear and specific, and not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided.

A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits,say, a murder in the presence of the public,. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

(6) It is useful to refer the second decision of the supreme court in Adri Dharan Das's case. Two Judges Bench of the Hon'ble Supreme Court while considering the power of the High Court/Sessions Court under section 438 Cr.P.C. has observed that :

"16. Section 438 is a procedural provision which is concerned with the personal liberty of an

individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “ reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Ground on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after the arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released

on bail “whenever arrested for whichever offence whatsoever”. Such “blanket order” should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely....”

(7) The analysis of both the decisions made it clear that “blanket order” of anticipatory bail should not be “generally” passed. It also makes it clear that “normally” a direction should not be issued to the effect that the applicant shall be released on bail “ whenever arrested for whichever offence whatsoever”.

(8) It is clear that even under section 438 Cr.P.C., if special circumstance/circumstances shown and in extra ordinary case and ample materials placed, the court to strike a balance between individual rights of personal freedom and the investigation right of the police, pass an appropriate order including the one directing the prosecution to give advance notice for a reasonable time. However, there cannot be a direction such as that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever” without reference to special circumstances and acceptable material. As stated earlier, we make it clear that the duty lies on the court considering application for the anticipatory bail to strike a balance between the applicant's right to personal freedom as well as the investigation right of the police.

(9) In State of Maharashtra V. Modh. Rashid and antoher (2005) 7 Supreme Court Cases 56, the Hon'ble Supreme Court set aside the direction of the High Court not to arrest first respondent

therein in any crime, except after written notice to him. The State of Maharashtra challenged the blanket order of not arresting the first respondent for a period of three years. Factual position shows that on the application of the respondent therein,the High court issued a direction to the effect that if any crime is registered against the applicant(first respondent before the Supreme Court) in future with the Nallasopara Police Station within a period of three years, he shall not be arrested in connection therewith, except after service of four working days' advance notice in writing to him. The aforesaid order was passed in a contempt petition that had been filed by the first respondent against the State of Maharashtra and the Assistant Police Inspector concerned attached with the aforesaid police station. The first respondent by an earlier order passed on 26.8.2002, was granted anticipatory bail. The grievance of the first respondent was that despite grant of interim order in his favour restraining the arrest, the police arrested him in violation of the order. While disposing of the contempt petition and directing that the contempt petition be dropped, it has been noticed in the impugned order that since on the face of it the first respondent was arrested in respect of a different offence registered against him as per the affidavit of the police officer, it would be difficult to hold the officer guilty of contempt unless it is shown that the crime registered was a false one. Under the said circumstance, the contempt action was dropped and the inquiry was directed to be conducted by the Additional Chief Secretary, Home Department, Government of Maharashtra in respect of complaint filed by first respondent dated 25.3.2002. That direction has not been challenged by the State. The limited challenge by the State of Maharashtra before the Supreme Court is to the blanket order of not arresting the first

respondent for a period of three years. After perusing the entire records including order dated 26.8.2002, their Lordships have concluded that such a blanket protection of not arresting the first respondent in any crime, except after written notice to him, could not be passed. In the penultimate paragraph, their Lordships observed that if out of vindictiveness,any false case is registered against the first respondent, he is not without remedy to challenge it in an appropriate forum. It is clear that though their Lordships have set aside the order of blanket protection, however, observed that in appropriate case the court is free to pass an order depending on the circumstances of the case.

(10.) In addition to the above decisions, learned senior counsel appearing for the petitioner placed reliance on some of the orders passed by the learned Single Judges of this court in a petition filed under section 438 of the Code of Criminal Procedure wherein direction was given to issue one week's advance written notice in order to enable the person concerned to approach the court for necessary relief.

(11) Learned Advocate General, in addition to pointing out the principles laid down in Gurbaksh Singh Sibbia's case and Adri Dharan Das's case also pressed into service the decision of the Supreme Court reported in State REP. BY THE C.B.I. V. Anil Sharma (1997) 7 SCC 187. The said appeal was filed by the CBI assailing the previous arrest order granted by the Himachal Pardesh High Court in favour of the respondent therein under section 438 of the Code. The respondent was a former Minister of Himachal Pardesh State Government. The CBI had been investigating the case against the respondent for an offence under section 13(2) of the Prevention of Corruption Act with the allegations that he has

amazed wealth in excess of his known source of income. While the investigation was in progress, the respondent approached the High Court of Himachal Pardesh for an order of anticipatory bail. Over ruling all the objections raised by the CBI, learned Single Judge of the High Court granted the order subject to the conditions that the respondent shall not go abroad without the prior permission of the court and shall surrender his passport to the CBI. The said order was objected to by the CBI who filed a petition to the Supreme Court contending that the order of anticipatory bail should not have been granted in such a case. Accepting the submission of the CBI's counsel and presuming that responsible police officer would conduct themselves in a responsible manner and those entrusted with the task disinterring offence would not conduct themselves as offenders and perusing the case dairy, disagreed with the order of the High Court in exercising discretionary power under section 438 of the Code by granting pre-arrest bail order to the respondent, set aside the same and allowed the appeal.

(12) Learned Advocate General has also relied on order of the Supreme Court dated 26.4.2002 rendered in Special Leave to Appeal (Crl.) 1753/202.Three Judges Bench of the Supreme Court after noticing the order of the learned Single Judge of this court, set aside the direction of the learned Judge that the petitioner shall be given 15 days notice in writing before he is arrested in any such case. While commenting the order of the leaned Single Judge, the Hon'ble Supreme Court observed that " the aforesaid order is not in compliance with section 438 of the Code and a blank cheque which has been given is uncalled for. The High Court,therefore, was not in error when he did not take any action for contempt which was alleged.....".

(13) Learned Advocate General has also brought to our notice the case State of Maharashtra V. Modh. Rashid and another (2005) 7 SCC 56 wherein Hon'ble Supreme Court set aside the direction of the High Court that the petitioner therein shall not be arrested in any crime except after written notice to him.

(14) In D.K.Ganesh Basu V. P.T.Manokaran and others 2007(2) RCR (Criminal) 161, the Hon'ble Supreme Court after considering similar direction to the investigating agency granting advance notice relying on Adri Dharan Das's case and other earlier decisions, set aside the order of the learned Single Judge of the Madras High Court.

(15) In Sunita Devi V. State of Bihar and another 2005(1) SCC 608, the Supreme Court set aside the order of the High Court granting unconditional protection. However, the petitioner therein was granted a month's time to apply for regular bail after surrounding to custody before the court concerned which shall deal with the application in accordance with law.

(16) The above decisions relied on by both sides clearly show that while considering the claim of pre-arrest in a petition filed under section 438 of the Code normally/generally blanket protection such as not to arrest the petitioner without intimation to him or give advance notice before arresting him should not be given. As pointed out by the learned senior counsel for the petitioner, it is true that all these orders were passed by the Hon'ble Supreme Court in an appeal filed against the orders of various High Courts in a petition filed under section 438 of the Code. Though the petitioner has filed a writ petition under Articles 226/227, the principles enunciated therein are applicable to the case in hand.

(17) We have already observed in the earlier part of this

judgment while considering a petition filed under section 438 of the Code, the High Court/Subordinate Court though have no power to grant blanket order, in an extra ordinary case and if special circumstances are available,they are free to pass appropriate orders on the acceptable material.

(18) In the light of the above propositions,let us consider the factual position in respect of four FIRs registered against the petitioner.

(i) F.I.R. No.5 dated 23.3.2007 under section 409,420,467,468,471 and 120-B of the Indian Penal Code,Police Station Vigilance Bureau,Ludhiana (Annexure P-9/A)

It is not in dispute, and in fact learned Advocate General has fairly stated in respect of the present complaint, the investigation has already been completed.

(ii) F.I.R. No.105 dated 10.6.2007 under sections 307,452,447,379,427,148 and 149 of the Indian Penal Code, Police Station Sadar ,Ludhiana (Annexure P/16)

The above complaint relates to occurrence of 23.10.2006. The complaint was made only on 10.6.2007. According to the petitioner it is a foisted case after the third respondent came to power.

(iii) F.I.R. No.126 dated 12.6.2007 under section 384,406,420,467, 468,471 of the Indian Penal Code, Police Station Civil Lines, Patiala (Annexure P/30)

It relates to occurrence from 16.5.2007 to 12.6.2007. The complaint was made on 12.6.2007. It relates to the purchase of Mercedes Benz car and dispute between the petitioner and complainant (one Jagdeep Singh).

(iv) FIR No.227 dated 13.6.2007 under sections 406,420 and 506 of the Indian Penal Code,Police Station Kotwali, Patiala.

According to the complaint, the occurrence took place in the year 2002 and complaint was made only on 13.6.2007. The complaint relates to alleged cheating by the petitioner.

19. Apart from the above mentioned case, learned Advocate General fairly stated that one another case is under investigation. He also stated that as and when any complaint is received that will be dealt with in accordance with law following the procedure. It is made clear that we are not going into the merits of the allegations made in the complaint and it is for the investigating agency and the ultimate court to find out the truth about the allegations made. On perusal of the particulars referred to above, in the light of the principles repeatedly held by the Hon'ble Supreme Court, we are of the view that there cannot be any blanket direction for giving advance notice fixing certain period in view of the facts noticed here. However, the discretion vested in a court under section 438 of the Code of Criminal Procedure would be exercised depending on the extra ordinary circumstances based on acceptable materials.

20. Coming to the plea of quashing the remand order of Additional Chief Judicial Magistrate/Duty Magistrate, Ludhiana (Annexure P/21) dated 10.6.2007, after considering the contends of the request made by the police for remand and hearing the submissions advanced by the learned Assistant Public Prosecutor and defence counsel, learned Magistrate after satisfying himself that sufficient grounds exist for police remand, passed the order remanding the accused in police custody till 14.6.2007. The said order also discloses that the accused (petitioner herein) has already

been examined by the doctors at Civil Hospital, Ludhiana and he was medically alright. Learned Magistrate has also noted that there is no order of the civil court about the ownership of the suit land. In those circumstances, and of the fact that the Judicial Officer before passing the order of remand, verified all the details, applied his mind and after satisfaction, remanded the accused to police custody, we are are of the view that the same cannot be interfered with in the writ jurisdiction.

21 It is also the claim of the petitioner that in view of the harassment and torture in custody, and of the fact that the petitioner was closely associated with former Chief Minister, he may not get proper treatment at the hands of the State police, prayed for the entrustment of all the cases to Central Bureau of Investigation for further investigation. It is relevant to point out that in writ petition with reference to FIR 105 dated 10.6.2007 and at the time of arguments, the learned counsel for the petitioner submitted that in view of registering of several cases after filing of this writ petition, all cases may be entrusted to CBI. He also relied on several decisions of the Supreme Court in support of his claim for entrusting the matter to the CBI. On the other hand, learned Advocate General, strongly contended that first of all without the consent of the State Government, the investigation cannot be entrusted to C.B.I. and secondly, even on merits, petitioner has not made a prima facie and strong case for entrusting investigation to C.B.I. We have already referred to four complaints which are pending against the petitioner and another case which is under investigation. Except the “Ludhiana City Centre Scam”, i.e. FIR 5 dated 23.3.2007, other cases relate to complaint by individual either relating to land dispute or purchase of Mercedes Benz etc. In these circumstances and with the available

particulars, we are of the view that the petitioner has not made out a strong and prima facie case for entrusting the investigation to the CBI at this juncture. We make it clear that at the appropriate stage, petitioner is free to raise this point before the concerned court, if he is able to satisfy the same by placing acceptable materials. It is also relevant to point out that even in the first two cases, when the petitioner was remanded to police custody, the particulars furnished show that the petitioner has not raised any objection or made complaint about the harassment or torture at the hands of State police/ or Vigilance Bureau, though raised such allegations in the writ petition.

22. With regard to the relief pertaining to quashing of seizure of bank accounts/lockers, as already pointed out, the Code of Criminal Procedure is comprehensive and encompasses all possible remedies for violation of any provision enshrined therein. In such case, it is not possible for this court to interfere at this stage, that too in a writ petition and if the petitioner is able to substantiate that the seizure of the bank accounts etc. is not tenable, he may take recourse to the statutory remedy before the appropriate authority.

23. In these circumstances, we pass the following orders:

(i) In the light of factual details as mentioned above, and in view of the principles laid down by the Supreme Court in series of cases (which we have already referred to), we are satisfied that with the available material, the petitioner has not made out a strong and special circumstances at this stage for direction to the State Police/Vigilance Bureau for advance notice before effecting his arrest in any case.

(ii) The petitioner is free to raise all available objections

before the concerned court when he moves application(s) for anticipatory bail/ bails;

(iii) The request of the petitioner for quashing the order of remand (Annexure P/21) dated 10.6.2007 passed by learned Additional Chief Judicial Magistrate/Duty Magistrate is rejected;

(iv) The relief relating to quashing of the seizure of bank accounts/lockers is rejected with liberty to the petitioner to move the appropriate authority by placing relevant materials.

(v) The investigating agencies are directed to strictly follow and implement the directions of the Supreme Court in D.K.Basu V.State of West Bengal AIR 1997 SCC (610). Failing compliance, petitioner is free to point out the same then and there before the appropriate authority/forum. The same agencies are also directed not to harass or torture the petitioner in the course of investigation or in custody.

(vi) The claim for entrusting the entire investigation to C.B.I. is rejected. However, the petitioner is free to raise the same at the appropriate stage, by placing acceptable materials.

24. With the above observations, the writ petition is disposed of.

25. Copy of the order attested by the Special Secretary of the Bench be given to counsel for the parties.

(P. SATHASIVAM)
JUDGE

July 11 , 2007
sks

(RAJIVE BHALLA)
JUDGE